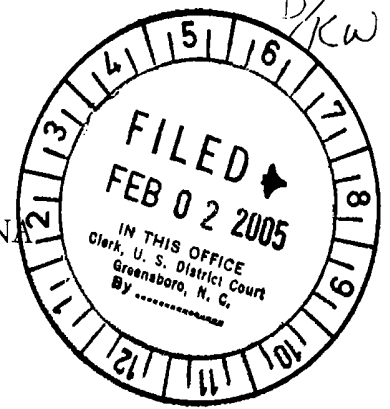


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



METROPOLITAN LIFE INSURANCE
COMPANY,

Plaintiff,

v.

1:04CV00161

JIMMIE GREGORY ROGERS, JR., SHELDON
D'WAYNE ROGERS, SADDIE L. MURDOCK,
also known as Sadie Murdock, LIFE PARTNERS,
INC. in its own behalf, and as "Agent",
STERLING TRUST COMPANY, in its own
behalf, and as "Escrow Agent", and JIMMIE
GREGORY ROGERS, JR., EXECUTOR of the
estate of Patricia M. Rogers-Milton,

Defendants.

ORDER

BEATY, District Judge.

This matter is an Interpleader action, pursuant to 28 U.S.C. § 1335, in which the Defendants are contesting who is the proper party to receive the life insurance benefits of the deceased, Patricia M. Rogers-Milton. On August 18, 2004, this Court's Order [Document #16] granted a joint Motion for Summary Judgment [Document #10] by Defendants Life Partners, Inc. and Sterling Trust Company, because Defendants Jimmie Gregory Rogers, Jr. and Sheldon D'Wayne Rogers did not respond to that Motion. At that time, the Court believed that any failure to respond represented an indication that Defendants Jimmie Gregory Rogers, Jr. and Sheldon D'Wayne Rogers were satisfied with the interpleader and had no objection to the summary judgment being entered, particularly because Jimmie Gregory Rogers, Jr. and Sheldon D'Wayne Rogers had previously waived summons. Subsequently, on August 27, 2004, the Clerk of Court for the Middle District of

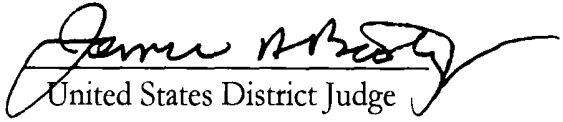
North Carolina ("the Clerk") disbursed the funds previously paid by Plaintiff Metropolitan Life Insurance Company into the Court's registry in the form of a check for \$190,855.16 to Sterling Trust Company, in care of James C. MacRae, the attorney of record for Defendants Life Partners, Inc. and Sterling Trust Company.

However, on December 2, 2004, Defendants Jimmie Gregory Rogers, Jr. and Sheldon D'Wayne Rogers filed a joint Motion to Set Aside Summary Judgment [Document #17] under Rule 60(b) of the Federal Rules of Civil Procedure. These two Defendants, who are represented by Attorney Allen W. Rogers, argue that due to Allen W. Rogers' incapacity during the time period of April 2004 until January 2005, they did not receive actual notice of the joint Motion for Summary Judgment by Defendants Life Partners, Inc. and Sterling Trust Company, nor did they receive notice of this Court's Order on August 18, 2004, allowing summary judgment to be entered. After holding a hearing on this matter on January 27, 2005, the Court finds that based on the evidence presented, there is no clear evidence that either Jimmie Gregory Rogers, Jr. or Sheldon D'Wayne Rogers had actual notice of the Motion for Summary Judgment or any of the subsequent proceedings. As such, the Court finds that it would be inequitable not to set aside the Order allowing Summary Judgment and allow Defendants Jimmie Gregory Rogers, Jr. and Sheldon D'Wayne Rogers time to respond to the Motion for Summary Judgment. Thus, Defendants Jimmie Gregory Rogers and Sheldon D'Wayne Rogers' Motion to Set Aside Summary Judgment is hereby GRANTED. They shall have thirty (30) days from the entry of this Order to respond to the Motion for Summary Judgment. Any further pleadings should be filed in compliance with the Local Rules of the Middle District of North Carolina.

It is FURTHER ORDERED that the \$190,855.16 disbursed by the Clerk to Sterling Trust Company in care of their attorney James C. MacRae, after the Court's Order granting summary

judgment, shall be held in trust by Sterling Trust Company for the remainder of this action until further Order of the Court.

This, the 2 day of ^{February}~~January~~, 2005.


United States District Judge